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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1969
No. 1540

TED FREDERICK WILLIAMS,
Petitioner,

vs.

UNITED STATES OF AMERICA,

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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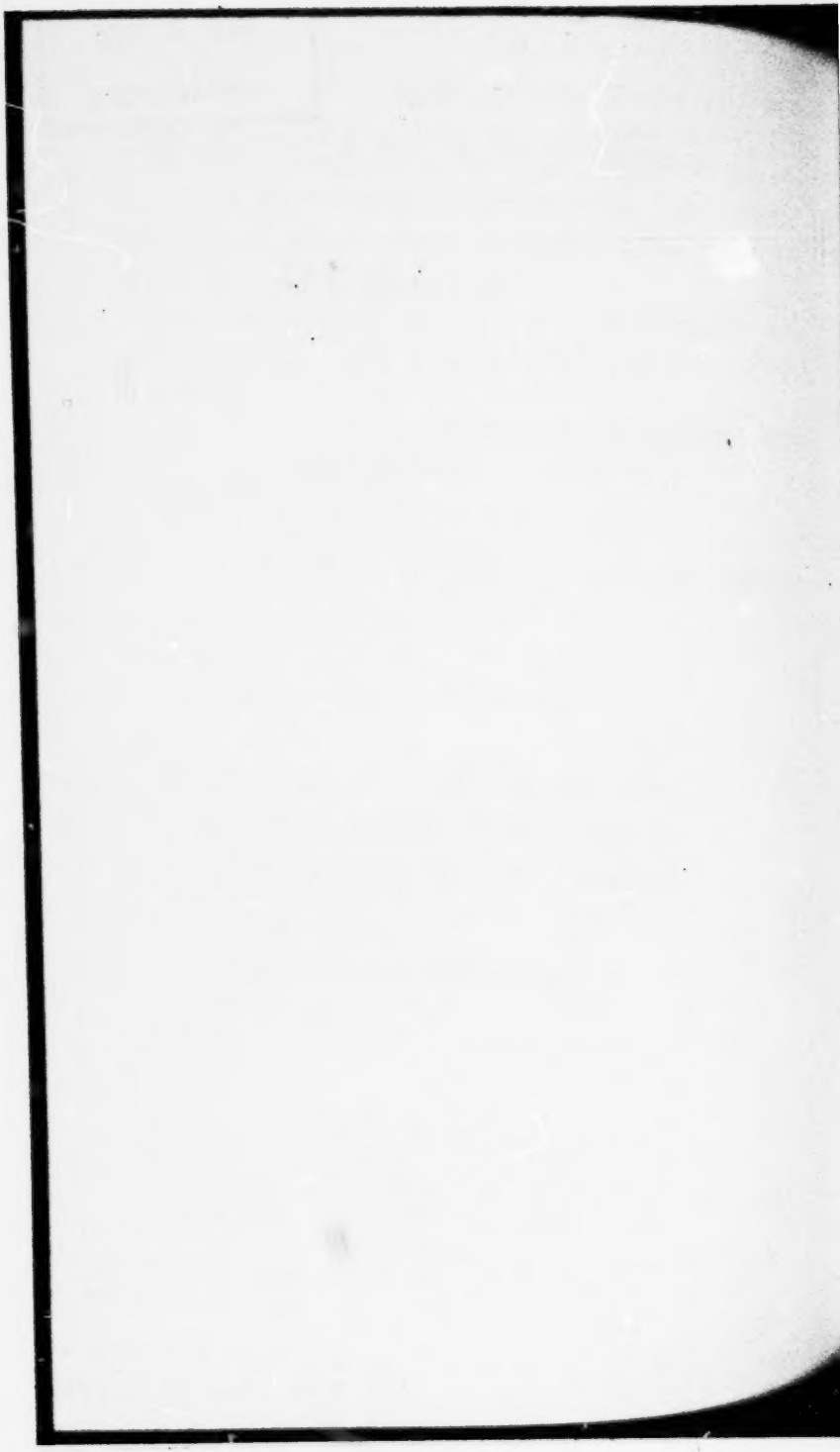

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Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

Petitioner, Ted Frederick Williams, respectfully prays for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit to review its judgment affirming a judgment of the United States District Court for the Southern District of California, sentencing petitioner to five years imprisonment.

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OPINION BELOW

Trial in the Federal District Court was by jury.

The opinion of the court below is appended hereto as Appendix "A", and is also found in the Clerk's Record of the Circuit Court. The opinion of the Court below is as yet not reported. The judgment of the court below is appended hereto as Appendix "B". A copy thereof also appears in the Clerk's Transcript from the Circuit Court.

GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

The date of the judgment sought to be reviewed and the time of its entry is March 9, 1970 (R.C.A. Judgment).

The Petition for Rehearing was denied by the court on April 8, 1970.

The statutory provision believed to confer on this court jurisdiction to review the judgment in question by Writ of Certiorari is 28 U.S.C. 1254(1).

QUESTIONS PRESENTED FOR REVIEW

I

The Government declined to reveal the name and whereabouts of a material witness informant when requested to do so by the defense. The trial court by placing its imprimatur on this refusal denied the defendant

OPINION BELOW

Trial in the Federal District Court was by jury.

The opinion of the court below is appended hereto as Appendix "A", and is also found in the Clerk's Record of the Circuit Court. The opinion of the Court below is as yet not reported. The judgment of the court below is appended hereto as Appendix "B". A copy thereof also appears in the Clerk's Transcript from the Circuit Court.

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The Government declined to reveal the name and whereabouts of a material witness informant when requested to do so by the defense. The trial court by placing its imprimatur on this refusal denied the defend

the fair trial to which he is entitled by the United States Constitution.

II

The Appellant was convicted in violation of his constitutional rights under the Fifth Amendment to the Federal Constitution in that compliance with the laws of the United States required Appellant to incriminate himself.

III

The indictment is defective in that it does not allege in what respect the importation of marijuana into the United States is unlawful.

IV

This conviction was based almost entirely on the uncorroborated testimony of an informant in the toils of the law, a most untrustworthy source. This Court should hold as a matter of policy that certainly information insufficient to even justify a lawful search cannot a fortiori be accorded sufficient weight to convict a defendant beyond all reasonable doubt.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Involved are the Fifth and Sixth Amendments to the United States Constitution and

the fair trial to which he is entitled by the United States Constitution.

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The Appellant was convicted in violation of his constitutional rights under the Fifth Amendment to the Federal Constitution in that compliance with the laws of the United States required Appellant to incriminate himself.

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This conviction was based almost entirely on the uncorroborated testimony of an informer in the toils of the law, a most untrustworthy source. This Court should hold as a matter of policy that certainly information amounts to [illegible] to support a jury's finding beyond all reasonable doubt.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Involved are the Fifth and Sixth Amendments to the United States Constitution and

21 U.S.C. 176, 19 U.S.C. 1459, 1461, 1484 and 1485 and California Health and Safety Code Section 11530.

STATEMENT OF THE CASE

An indictment was filed in the Federal District Court for the Southern District of California charging the Appellant, Jerry Knight and Linda Knight with a violation of 21 U.S.C. 176a relating to the unlawful importation of marijuana into the United States [C.T.]. After being duly arraigned and pleading not guilty the case ultimately came to trial before the Honorable John W. Delehant, Judge. The Knight's cases were continued and only the Appellant was forced to stand trial. After a trial by jury the Appellant was convicted [R.T. 221] and sentenced to five years in prison [R.T. 233]. A Notice of Appeal was timely filed. On March 19, 1970, the United States Court of Appeals for the Ninth Circuit affirmed the judgment and on April 8, 1970, denied a Petition for Rehearing.

STATEMENT OF FACTS

James E. Strand, Inspector for the Bureau of Customs, Department of the Treasury, was called to the stand by the Government as its initial witness [R.T. 30]. He testified that as a custom's agent his duties encompassed the inspection of commercial entries, etc. involving merchandise coming from Mexico. He was working on August 18, 1967. He possessed what he called a "lookout book", a sheet of paper with license numbers written on it of cars suspected of bringing contraband into the United States [R.T. 31]. There were some seventy odd lookout items in the book at that time [R.T. 32].

James W. Jackson, another Custom's Agent at the Port of San Ysidro, was next called to the stand [R.T. 35]. He testified that an informant notified Mr. Greppin, also a Custom's Agent, that a certain amount of marijuana had been loaded in a 1949 Jaguar Automobile with a California License Plate Number MAL 559. The informant indicated he had seen part of the loading occur [R.T. 36]. The vehicle had been seen at a known narcotic dealer's house in Tijuana, Mexico [R.T. 37]. The informant was a paid employee of the Custom's Bureau [R.T. 37-38].

A stipulation was entered into wherein it was agreed that the informer at no time observed

STATEMENT OF FACTS

the Defendant Williams [R.T. 39].

All of these previous proceedings were outside the hearing of the jury and were offered on the question of whether the informant's identity and whereabouts should be divulged. The Judge denied the Motion to so reveal.

The case itself proceeded before the jury [R.T. 83].

The first witness for the government was Jerry Wayne Knight [R.T. 83]. He testified that he was twenty years of age and resided in the Linda Vista Area of San Diego, California, and was presently unemployed [R.T. 84]. He indicated that he was acquainted with the Defendant Williams as of August 18, 1967. Prior to that date he had known him for approximately six weeks. Williams was also acquainted with the witnesses's wife, Linda Knight [R.T. 84].

The Prosecutor then directed the witness's attention to Friday, August 18, 1967. Knight testified that he first saw Williams at the Linda Vista Plaza in Linda Vista in the mid-morning -- after ten o'clock [R.T. 85]. Mr. and Mrs. Knight were both present at the time.

Appellant at that time indicated he would like Knight to drive his [Appellant's] car across the border and that Knight would be paid Fifty ($50.00) Dollars for it. The witness was asked whether or not Appellant said anything about marijuana being transferred in the vehicle and the witness indicated that he did not remember (R.T. 87]. He was not told why

the Defendant Williams [R.T. 39].

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Williams himself was unwilling to drive the car across the border [R.T. 88]. Both Knights and Ted Williams left for Tijuana. They stopped at a gas station along the way and the Appellant purchased gasoline with a credit card [R.T. 88]. Appellant was driving the vehicle at that time [R.T. 89]. The subject of marijuana was discussed enroute to the international boundary. Knight recollected with a great degree of uncertainty that he thought Ted Williams told him that he [Knight] would be bringing marijuana back across the border [R.T. 89].

After arriving in Tijuana the Knights got off at a bar and Ted Williams went somewhere then returned to pick them up [R.T. 90]. They then parked off Revolution Boulevard and Appellant left and then returned with a brown shopping bag in his hand. The witness saw the marijuana in the bag. While in a deserted area outside of Tijuana the witness saw the Appellant take kilos of marijuana out of the shopping bag and put them inside the car underneath the seats [R.T. 92]. He put something under the front and back seats [R.T. 92]. The witness then identified certain marijuana bricks as having been the ones placed in those positions [R.T. 93].

They then left this deserted spot and returned to downtown Tijuana. Knight testified that Williams at this time told the Knights to meet him on the other side of the border at Denny's Restaurant [R.T. 93]. The witness had

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no personal knowledge of how Williams crossed the border into the United States [R.T. 94].

About forty-five minutes to an hour after Knight crossed the inspection line he saw Williams at the Port of Entry in San Ysidro [R.T. 95].

Under cross-examination the witness testified that he had not left the Linda Vista Plaza for Tijuana as early as 9:00 A.M. [R.T. 95]. Subsequently, he admitted, however, that he was really not sure of the time [R.T. 96]. He further conceded that he was a defendant in the present proceedings although he denied being offered any promises of leniency for his testimony. He stated that he had never previously been convicted of a felony [R.T. 97]; he denied having bought marijuana in Tijuana [R.T. 98]. The witness denied that Williams lent him the car to go shopping [R.T. 98].

On re-direct examination the witness admitted that he hoped by virtue of his testimony to receive some favorable consideration by the Court [R.T. 98].

Walter White was next called to the stand [R.T. 100]. White testified that he was employed on August 18, 1967, at about 3:15 in the afternoon as a United States Border Patrolman. He received a transmission over the radio to contact Agent James Jackson at the secondary inspection area at the Port of Entry. He was advised that the agents were working on a mari-

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juana case and that two persons were in custody. There was supposed to be a third person involved and the Agent was requested to go to San Ysidro to see if he could locate that person [R.T. 100]. The only description he was furnished was that the individual was a young male caucasian, perhaps in the company of a negro [R.T. 101]. He knew that the persons arrested were Mr. and Mrs. Knight [R.T. 101]. He drove his car to Oscar's Drive-in, parked it, and then circulated around a little bit. After a few minutes he noticed Mr. Williams standing with a male negro [R.T. 101]. He watched for awhile and absolutely nothing transpired [R.T. 102]. The witness then approached and struck-up a conversation without identifying himself [R.T. 102]. The witness asked if Williams was waiting for Jerry Knight and he answered "No, I am not. I don't know him" [R.T. 102]. The negro likewise remarked that he did not know Jerry Knight.

This conversation took place at 3:30 in the afternoon or perhaps 3:45 [R.T. 102]. In the course of that conversation Williams said that he was from Los Angeles and asked the witness if he was going to Los Angeles because Williams wanted a ride. The witness answered "No, that he was just in the area looking for somebody". The Agent then left the scene [R.T. 102].

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Williams on Highway Interstate 5 about a quarter of a mile from Denny's Restaurant [R.T. 103]. He was talking to a police officer along the highway [R.T. 103]. The Agent then identified himself and a further conversation with defendant ensued at that time [R.T. 103]. The Agent asked the defendant if he was Ted Williams and Appellant stated that he was; he was asked if he owned a Jaguar Automobile and he stated that he did. Then he was advised of his Miranda Rights and told that agents were investigating a marijuana case at the border [R.T. 103].

Agent Jackson was recalled to the stand [R.T. 107]. He indicated that he investigated about six marijuana cases a month [R.T. 107]; that in his experience as an investigator he became familiar with the price of marijuana in Tijuana [R.T. 108]. He testified that seventeen kilo bricks could probably be bought at a price of about Thirty Dollars a kilo or Five Hundred Ten Dollars total [R.T. 108].

He testified that at 3:15 P.M. on August 18th he saw Ted Williams at the secondary inspection area of the Port of Entry in San Ysidro [R.T. 109]. This was after he had returned to that place with Mr. White, the Agent who previously testified, and a San Diego Police Officer [R.T. 109]. He then disclosed that the time was close to four o'clock in the afternoon. He interviewed Williams [R.T. 109]. Custom's Agent White was also present.

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He advised Williams of his Miranda Rights [R.T. 110]. Williams was asked how he entered the United States and replied, "as a pedestrian" [R.T. 110].

He admitted ownership of the 1959 (sic) Jaguar [R.T. 111]; he further admitted that upon entering the United States he recognized his vehicle at the secondary inspection area and was fearful of asking questions concerning it because he thought it might contain marijuana or some kind of contraband [R.T. 111]. He testified that he had loaned the vehicle to Jerry Knight on the morning of August 18th [R.T. 111]; that Knight had just wanted to borrow the automobile [R.T. 112]. Williams denied that he had traveled to the international border with the Knights [R.T. 112]. Williams stated that he knew that the vehicle had been taken into Mexico and he was looking for it because it had not been returned [R.T. 112]. Williams categorically denied knowing that there was marijuana in the vehicle [R.T. 115]. The Jaguar was registered to the Defendant Williams [R.T. 116]. Exhibit 2 was marked for identification which purported to be a receipt for the purchase of gasoline dated August 18, 1967, with the signature of Ted Williams [R.T. 116]. The receipt also referred to a Shell Service Station on Logan Avenue in San Diego, California [R.T. 117]. The witness testified that he obtained that receipt from the 1949

(sic) Jaguar, he thought [R.T. 118]. The Government rested [R.T. 118].

The Defendant Williams took the stand [R.T. 119]. He testified that he was residing in Los Angeles; that he was a junior auditor and had never previously been arrested in his life for anything [R.T. 119]. He testified that the Knight's left Linda Vista at 9:00 o'clock in the morning [R.T. 119]; that Jerry Knight had asked to use the car to go to Mexico to take his wife shopping. Williams testified that he had known Knight for approximately three months; he had met him at parties he attended with a girl he was going with in Point Loma [R.T. 120]. Knight said he was going shopping across the border in Tijuana but did not mention what he was intending to buy. There was no mention of marijuana [R.T. 120]. On August 18th Williams went down to Linda Vista Center and the Knights asked to use the car. Williams wanted to wait around Linda Vista and Knight said he would only be gone a couple of hours and Williams could think of no reason not to let him use the car; Williams was not desirous of going to Tijuana at that time [R.T. 121]. Williams then testified that he was arrested about a quarter of a mile from the border on the United States side. He left Linda Vista close to 1:00 P.M. and travelled down to Mexico to look for the car [R.T. 122].

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Williams went to Tijuana because Knight did not return in the two hours allotted him and Williams suspected mechanical failure because he knew that the clutch and generator on his car were in poor condition [R.T. 122]. Williams also thought that perhaps Knight had committed some type of traffic violation.

At about 8:00 A.M. on the 18th Williams had driven to the Shell Station, had the car filled up with gas and had the battery charged [R.T. 122]. He paid with a credit card and identified People's Exhibit No. 2 as the receipt obtained at that time [R.T. 123]. Williams hitched a ride to the border with a casual friend who dropped him off [R.T.123]; he then walked across the border and went to the Tijuana Police Station and checked there to see if the car had been involved in an accident [R.T. 124]. He returned to the United States at about 3:15 to 3:50 [R.T. 124]. About fifteen minutes after entering the United States a Custom's Agent approached and asked him if he knew Jerry or Linda Knight. Williams thought he was concerned with the car but did not want to identify himself because he did not feel that it was any of his business to tell anything [R.T. 124]. Williams then walked to the area where he was ultimately arrested. Thereafter he was taken back to the Custom's Depot [R.T. 125]. He never handled any marijuana [R.T. 125].

When Williams first spotted his car, the

hood, trunk and doors were open [R.T. 126]. He immediately suspected that someone was trying to smuggle something across the border and did not want to be involved. He knew it was the worst thing for him to do to be in that general area [R.T. 126].

Prior to this occasion Williams had been to Mexico and had observed cars being examined as they returned to the United States [R.T. 126, 127].

On cross-examination Williams testified that he was living in Los Angeles both at the time of trial and at the time of the August 18th incident. He was in San Diego visiting a girl friend. He spent the night of the 17th sleeping in his car in the Point Loma Area [R.T. 128], he got up at 7:00 in the morning on the 18th and drove his car to a Shell Station and then back to the Linda Vista Area. Williams identified a gas station receipt for August 17th wherein he bought 4.8 gallons of gas for $1.79 [R.T. 132]. Williams had previously lived in the San Diego Area [R.T. 134].

When the car was loaned to the Knights there was no discussion of marijuana and Mr. Knight said nothing about receiving $50.00 to drive the car back into the United States [R.T. 135]. At the Tijuana Police Station Ted Williams talked to a police officer and the officer informed him that the police department had no knowledge of a 1957 Jaguar [R.T. 139]. Williams

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On redirect examination Williams testified that it is the custom nowdays among young people to know each other by first name and not to bother to introduce themselves formally [R.T. 146]. Williams testified that he attempted to locate alibi witnesses but was unsuccessful because he was not familiar with the area and did not know their names [R.T. 149].

On further re-direct examination Williams testified that he was in the military; he spent one year on the east coast, two years in Spain and thirteen months in Viet Nam; that he was under fire in some of the major skirmishes of the Vietnamese war and received high conduct ratings. He was honorably discharged [R.T. 152].

Agent Jackson was recalled by the Prosecution and testified that he heard the testimony of the defendant and that the defendant had told Agent Jackson that he had stopped for a few drinks while in Mexico looking for his vehicle [R.T. 154].

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REASONS FOR GRANTING THE WRIT AND AMPLIFYING THE SAME

I

THE GOVERNMENT DECLINED TO REVEAL THE NAME AND WHEREABOUTS OF A MATERIAL WITNESS INFORMANT WHEN REQUESTED TO DO SO BY THE DEFENSE. THE TRIAL COURT BY PLACING ITS IMPRIMATUR ON THIS REFUSAL DENIED THE DEFENDANT THE FAIR TRIAL TO WHICH HE IS ENTITLED BY THE UNITED STATES CONSTITUTION.

The Appellant was accused of travelling to Mexico with Government witness Jerry Knight and Knight's wife and while there leaving them at a bar and returning some time later with 60 pounds of marijuana. Knight testified that he then transported the contraband across the border and was to meet Appellant on the United States side at which time he was to receive $50.00 for his efforts. Appellant testified that Knight asked to borrow his car to go to Mexico, did so and marijuana was smuggled into California; that he had no knowledge of it.

The defense requested and obtained a pre-trial hearing to ascertain whether the informant could be demonstrated to be a material witness to some phase of the transaction and, if so, to ascertain his identity. In the course of that hearing Customs Inspector Strand testified that he stopped the Jaguar driven by Jerry Knight because the automobile was one of seventy items listed in his "lookout book", a

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sheet of paper with license numbers written on it of cars suspected of bringing contraband into the United States [R.T. 31]. Customs Agent Jackson then testified that the informant notified fellow Customs Agent Greppin that he had seen the marijuana loaded into the car in question at a narcotic dealer's house in Tijuana, Mexico. The informant was admittedly a paid employee of the Custom's Bureau [R.T. 37-38]. The Government stipulated that at no time did the informer observe the Appellant [R.T. 39]. The Court declined the Defense' demand that the informant's identity be divulged [R.T. 40].

In view of the evidence adduced the informant was a crucial witness for the defense. Since he observed the contraband being loaded into the vehicle beneath the border and never saw Appellant it was quite likely that Government witness Knight was a participant in the loading process. Inasmuch as Knight actually testified that Williams left him and his wife at a bar and obtained the marijuana out of his presence, proof that Knight was seen at the time of loading would have crushed the Government's entire case. This evidence was especiall significant since the Government's whole lawsuit depended on the testimony of Knight who himself was caught dead-to-rights with the contraband at the point of entry into the United

States. There were no admissions, no contraband was found on or near Appellant and there were no other witnesses who tied him into the smuggling charge. Appellant had a distinguished service record and had never before been arrested. His hopes for acquittal rested entirely on impeaching the testimony of Knight or showing Knight to have obtained the marijuana himself. The only witness who could have rendered this invaluable assistance was the paid Government informant who concededly exonerated Williams insofar as obtaining the marijuana was concerned but was not made available to testify concerning Knight's role.

Although the United States Attorney speculated that the marijuana was loaded by a cab driver or someone else who then returned it to Williams there was no evidence in the record to document this assertion. Certainly the prosecution did not even allege much less offer evidence that the Knights' were not seen by the informant. Consequently, the Defense was deprived of its one opportunity to impeach the Government's chief witness or to have laid the narcotics transaction at his own doorstep.

It has been abundantly clear since the decision of Brady v. Maryland, 373 U.S. 83, 89 (1963) that the Government may not withhold evidence favorable to the accused whether done intentionally, negligently, or in good faith. The Court declared therein:

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"We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."

Numerous cases decided thereafter hold that the prosecution may not withhold information which may materially affect the determination of guilt or innocence of a defendant. See e.g. Giles v. Maryland, 386 U.S. 73, 87 S. Ct. 1640 (1967); United States v. Wilkins (2d Cir. 1963) 326 F. 2d 135, 137; Barbee v. Warden (4th Cir. 1964) 331 F. 2d 53; United States v. Poole (7th Cir. 1967) 379 F. 2d 645; Orr v. United States (D.C. Cir. 1967) 386 F. 2d 988; Hamric v. Gailey, (4th Cir. 1967) 386 F. 2d 391; Jackson v. Wainwright, (5th Cir. 1968) 390 F. 2d 288; Lorraine v. United States, (9th Cir. 1968) 396 F. 2d 339; United States v. Keogh (2d Cir. 1967) 391 F. 2d 147; Lee v. United States (9th Cir. 1968) 388 F. 2d 738; United States v. Roberts (2d Cir. 1968) 388 F. 2d 646. It has recently been held that "The right of the accused to have evidence favorable to his defense cannot depend upon the benevolence of the prosecution". Williams v. Dutton (5th Cir. 1968) 400 F. 2d 797,800. And the same Court similarily opined:

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In Lee v. United States, supra, the Court refused to allow the prosecution to withhold the identity of a boy who may have been a percipient witness to a bank robber's escape -- although the prosecution denied that the witness' testimony would be favorable -- on the grounds that to require the defense to prove what the witness would say without access to a means for learning the identity of the witness would place too heavy a burden on the defense.

Clearly, in this case, not knowing the identity of the Tijuana informant or how to locate him, it was too great a burden to require the defense to prove that the informant would testify that Knight was a party to the loading of contraband. As Chief Justice Traynor opined in the significant informant case of People v. Perez, 62 Cal. 2d 769, 44 Cal. Rptr. 326, 328, "They need not prove conclusively before disclosure the very fact they seek to obtain through disclosure."

It is now axiomatic that a defendant has the right to the name and address of any informant whose identification might prove "relevant and helpful to the defense of the accused or essential to a fair determination of a cause."

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The rationale of these criminal cases is that, since the Government which prosecutes an accused also has the duty to see that justice is done, it is unconscionable to allow it to undertake prosecution and then invoke its governmental privileges to deprive the accused of anything which might be material to his defense. See People v. McShann, supra. If the

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THE APPELLANT WAS CONVICTED IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS UNDER THE FIFTH AMENDMENT TO THE FEDERAL CONSTITUTION IN THAT COMPLIANCE WITH THE LAWS OF THE UNITED STATES REQUIRED APPELLANT TO INCRIMINATE HIMSELF.

The indictment required that marijuana be imported into the United States contrary to law. The laws of the United States involving the substance marijuana are basically a requirement that the substance, upon being imported, be presented for inspection, entered and declared, pursuant to United States Code, Title 19, Sections 1459, 1461, 1484 and 1485. However, should the marijuana be presented for inspection as provided by said code, the defendant would then and there incriminate himself in violation of State Laws. Since this prosecution was in California, an examination of the laws of this state discloses that the possession of marijuana is a felony [California Health & Safety Code, Sec. 11530]. Therefore in prosecuting Appellant Williams under 21 U.S.C. Sections 176 for failure to comply with other

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In actuality, this case involves a much more decisive invasion of the defendant's Fifth Amendment Rights than the above-cited trio of cases for there the defendant's acts of registration and payment of a licensing tax, etc. furnished only strong leads which would aid the prosecution in obtaining convictions. Herein, acknowledgment of possession of a narcotic drug ipso facto proves a criminal offense in all fifty states of the union.

III

THE INDICTMENT IS DEFECTIVE IN THAT IT DOES NOT ALLEGE IN WHAT RESPECT THE IMPORTATION OF MARIJUANA INTO THE UNITED STATES IS UNLAWFUL.

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IV

THIS CONVICTION WAS BASED ALMOST ENTIRELY ON THE UNCORROBORATED TESTIMONY OF AN INFORMANT IN THE TOILS OF THE LAW, A MOST UNTRUSTWORTHY SOURCE. THIS COURT SHOULD HOLD AS A MATTER OF POLICY THAT CERTAINLY INFORMATION INSUFFICIENT TO EVEN JUSTIFY A LAWFUL SEARCH CANNOT A FORTIORI BE ACCORDED SUFFICIENT WEIGHT TO CONVICT A DEFENDANT BEYOND ALL REASONABLE DOUBT.

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The case for the Government hinged almost entirely on the testimony of Jerry Knight who was captured while smuggling marijuana into the United States from Mexico. Knight testified that he hoped to benefit from his testimony [R.T. 98]. Without it there could have been neither an arrest nor a conviction. Aguilar v. Texas, 378 U.S. 108 (1964); Wong Sun v. United States, 371 U.S. 481 (1963); Castillon v. United States (9th Cir. 1962) 298 F. 2d 256 (1962); People v. Gallegos, 62 Cal. 2d 176, 41 Cal. Rptr. 590 (1964); People v. Reeves, 61 Cal. 2d 268, 38 Cal. Rptr. 1 (1964); People v. West, 237 Cal. App. 2d 80, 47 Cal. Rptr. 341; People v. Perada, 229 Cal. App. 2d 814, 40 Cal. Rptr. 566; People v. Cedeno, 218 Cal. App. 2d 213, 32 Cal. Rptr. 246 (1963).

Thus, the pivotal and provocative issue is whether a man in the toils of the law who was the culprit caught redhanded can merely by shifting the blame and absent any corroboration be held sufficiently trustworthy to convict a defendant beyond all reasonable doubt and require him to spend five years in prison?

Routinely, it has been stated that corroboration of an informant or accomplice is not required to convict in the Federal Courts. United States v. Mule (C.C.A.N.Y. 1936), 45 F. F. 2d 132. But just as routinely it has been conceded that information imparted from an unreliable informant to a police official without corroboration of criminal conduct will not

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longer be permitted to persist in our law. Its eradication is called for now!

CONCLUSION

The Petition for Writ of Certiorari, Petitioner respectfully prays, should be granted and the judgment reversed.

Luke McKissack

LUKE McKISSACK
Attorney for Petitioner

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LUKE McKISSACK
Attorney for Petitioner

APPENDIX "A"

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

THE FREEMAN WILLIAMS,
Defendant-Appellant.

No. 23,875

(March 9, 1970)

Appeal from the United States District Court
for the Southern District of California

APPENDIX

Before: ELY and HUFSTEDLER, Circuit Judges, and WHELAN,* District Judge.

PER CURIAM:

On his appeal from his conviction for smuggling marihuana in violation of 21 U.S.C. § 176a, Williams contends that: (1) Section 176a is unconstitutional because compliance with the federal statute that would have legalized his importation of marihuana would have subjected him to termination under state laws penalizing possession of marihuana; (2) the uncorroborated testimony of his accomplice, Knight, was insufficient to sustain his conviction; and (3) the denial of his motion to declare the informer's identity was prejudicial error.

The first contention has been rejected by this circuit in cases decided after his briefs were filed. *United States v. Palmero*, (9th Cir. 1970) ___ F.2d ___; *Witt v. United States*, (9th Cir.) 413 F.2d 305, cert. denied (1969) 396 U.S. 962.

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*Hon. Francis C. Whelan, Judge, United States District Court, Central District, California, sitting by designation.

**Slip opinion Jan. 26, 1970.

APPENDIX

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APPENDIX "A"

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
vs.
TED FREDERICK WILLIAMS,
Defendant-Appellant.
No. 23,675

[March 9, 1970]

Appeal from the United States District Court for the Southern District of California

Before: ELY and HUFSTEDLER, Circuit Judges, and WHELAN,* District Judge

PER CURIAM:

On his appeal from his conviction for smuggling marihuana in violation of 21 U.S.C. § 176a, Williams contends that: (1) Section 176a is unconstitutional because compliance with the federal statutes that would have legalized his importation of marihuana would have subjected him to incrimination under state laws penalizing possession of marihuana; (2) the uncorroborated testimony of his accomplice, Knight, was insufficient to sustain his conviction; and (3) the denial of his motion to disclose the informer's identity was prejudicial error.

His first contention has been rejected by this circuit in cases decided after his briefs were filed. (*United States v. Polanco* (9th Cir. 1970) ... F.2d **; *Witt v. United States* (9th Cir.) 413 F.2d 303, *cert. denied* (1969) 396 U.S. 932.)

*Hon. Francis C. Whelan, Judge, United States District Court, Central District, California, sitting by designation.

**Slip opinion Jan. 26, 1970.

APPENDIX "A"

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
vs.
THOMAS PENDLETON WILLIAMS,
Defendant-Appellant.
No. 23,875

[March 9, 1970]

Appeal from the United States District Court
for the Southern District of California

Before: HUFSTEDLER, Circuit Judge, and WHERLAN,* District Judge

PER CURIAM:

On his appeal from his conviction for smuggling marihuana in violation of 21 U.S.C. § 176a, Williams contends that: (1) Section 176a is unconstitutional because compliance with the federal statutes that would have legalized his importation of marihuana would have subjected him to incrimination under state laws penalizing possession of marihuana; (2) the uncorroborated testimony of his accomplice, Knight, was insufficient to sustain his conviction; and (3) the denial of his motion to disclose the informer's identity was prejudicial error.

His first contention has been rejected by this circuit in cases decided after his briefs were filed. (United States v. Pedone (9th Cir. 1970) F.2d **; Witt v. United States (9th Cir.) 413 F.2d 809, cert. denied (1969) 396 U.S. 932.)

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*Hon. Francis C. Whelan, Judge, United States District Court, Central District, California, sitting by designation.

**Slip opinion Dec. 29, 1970.

If Williams' second contention is that the uncorroborated testimony of an accomplice is never sufficient to sustain a conviction, the contention has been often answered adversely to him. (*E.g., Suhl v. United States* (9th Cir.) 390 F.2d 547, *cert. denied* (1968) 391 U.S. 964; *Moody v. United States* (9th Cir. 1967) 376 F.2d 525.) If the contention is merely that Knight's testimony was insufficient, the record does not support the contention. Knight's testimony was not incredible or unsubstantial on its face; nor was it wholly uncorroborated. The case was a proper one for submission to the jury.

His last contention requires more discussion. A customs officer, Jackson, testified that there had been relayed to him by another customs officer, Greppin, information received by Greppin from an informant. The informant was said to have told Greppin that he had seen part of the loading of marihuana into the concealed panels of a specifically described Jaguar. The informant told Greppin that the informant had not assisted in the loading or otherwise participated in the arrangements for shipping the marihuana. The informant also said that he had seen the Jaguar at a known narcotic dealer's house in Tijuana, Mexico. The Government stipulated that the informer at no time observed Williams on the day in question. The Jaguar belonged to Williams. When Williams' codefendant, Knight, drove the loaded car to the border, customs officers, relying on the relayed information, searched the vehicle and found 40 pounds of concealed marihuana. Williams' motion to disclose the identity of the informer was denied.

Under *Roviaro v. United States* (1957) 353 U.S. 53, there is no fixed rule in respect of such disclosure, but a balancing test molded to fit the circumstances of the case. We have concluded that there was no error in denying Williams' motion to disclose, because we are unable to say that the disclosure would have been "relevant and helpful" to Williams' defense. The informant did not participate in any way in the offense. By stipulation, the informant never saw Williams on the crucial day. Nothing other than speculation suggests that the informant's testimony could have been used to impeach Knight's testimony, because that testimony and the aspects of the informant's story revealed by Agent Jackson were reconcilable. Williams thus failed to carry his burden of showing a basis for requiring disclosure of

an informant's identity. (*E.g., Lannom v. United States* (9th Cir. 1967) 381 F.2d 858, *cert. denied* (1968) 389 U.S. 1041; *Alexander v. United States* (9th Cir.) 362 F.2d 379, *cert. denied* (1966) 385 U.S. 977; *Hurst v. United States* (9th Cir. 1965) 344 F.2d 327.)

The judgment is AFFIRMED.

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as to [illegible] identity (E.g., Lemmon v. United States (9th Cir. 1967) 381 F.2d 856, cert. denied (1968) 389 U.S. 1041; Alexander v. United States (5th Cir.) 362 F.2d 379, cert. denied (1966) 385 U.S. 977; Byrd v. United States (9th Cir. 1965) 344 F.2d 327.)

The judgment is AFFIRMED.

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 6430 Sunset Boulevard, Suite 521, Hollywood, California 90028. On May 6, 1970, I served the within Petition for Writ of Certiorari on the plaintiff and respondent in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

United States Attorney
Federal Courthouse
San Diego, California

Solicitor General
Department of Justice
Washington, D. C. 20530

I declare that the foregoing is true and correct.

Executed on May 6, 1970, at Los Angeles, California.

Geraldine Cornwell

In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1540

TED FREDERICK WILLIAMS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Southern District of California, petitioner was convicted of complicity in the smuggling of marijuana into the United States from Mexico, in violation of 21 U.S.C. 176a. He was sentenced to five years' imprisonment. The court of appeals affirmed (Pet. App. A).

1. The facts are set forth at length in the petition (Pet. 5-16). Petitioner contends that on the facts the

trial judge erred in failing to require the government to disclose the identity of an informant under *Roviaro* v. *United States*, 353 U.S. 53. The considerations which support the district court's ruling are discussed in the opinion of the court of appeals (Pet. App. 2-3), on which we rely here. As the court below pointed out, the informant did not participate in the offense; nor did he at any time observe petitioner or identify petitioner as being present at the residence of a known narcotics dealer where the informant saw part of the marijuana being loaded into concealed panels of a Jaguar.[1]

Petitioner argues, however, that the informant might possibly have seen Knight, the man who drove petitioner's car across the border, at the dealer's residence and, therefore, conceivably, could have impeached the testimony of Knight, a government witness. Knight testified that he and his wife had driven to Mexico with petitioner, had then been dropped at a bar, and that petitioner had driven off and later returned to pick up the Knights. After parking the car, petitioner left the Knights again and this time came back carrying a brown shopping bag. Knight testified that the three then drove off to a deserted area outside of Tijuana where they "stashed" the marijuana (Tr. 90-95). Petitioner postulates that if the informant were able to identify Knight as being present at the dealer's house, this would tend to corroborate petitioner's testimony—that he loaned the car to Knight

[1] The government stipulated before the jury that petitioner was not observed by the informant at any time on the crucial day (Tr. 155-156).

to go shopping at Tijuana (Tr. 119-130)—and discredit Knight's testimony. Such speculation, however, is not sufficient to warrant disclosure of the informant's identity. See *Rugendorf* v. *United States*, 376 U.S. 528, 534-535.

2. The argument that compliance with 21 U.S.C. 176a would have required petitioner to incriminate himself has been considered and expressly rejected by the Ninth Circuit in *Witt* v. *United States*, 413 F. 2d 303, certiorari denied, 396 U.S. 932, and *United States* v. *Rosa Reyes-Meza De Polanco*, 422 F.2d 1304, certiorari denied May 4, 1970, No. 1879 Misc., this Term. The Fifth Circuit has also recently rejected this argument. *Walden* v. *United States*, 417 F. 2d 698. The cases cited by petitioner are not in point and clearly are inapposite in the context of the present case.

3. As the opinion below points out, petitioner's conviction did not rest solely on the testimony of an accomplice. Moreover, petitioner's argument as to the insufficiency of such testimony—that hearsay evidence of an informer or an accomplice will often not even establish "probable cause" for a search warrant—overlooks the fact that the trial evidence admitted here was not hearsay but the sworn testimony of the individual witness. See *Caminetti* v. *United States*, 242 U.S. 470, 495.

For the reasons stated, it is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1970.

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